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FEDERAL MARITIME COMMISSION

## SCM LINES TRANSPORTES/CCNI AGREEMENT

FMC AGREEMENT NO. **012105**

AGREEMENT TYPE:	This Agreement is pursuant to 46 C.F.R. sections 535.104 (e), (i), (x), (bb) and (gg)
LAST REPUBLISHED:	NOT APPLICABLE
CURRENT EXPIRATION DATE:	NOT APPLICABLE



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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement shall be the SCM LINES TRANSPORTES MARITIMOS SOCIEDAD UNIPESOAL, LDA/COMPANIA CHILENA DE NAVEGACION INTEROCEANICA, S.A. U.S. GULF/EAST COAST OF SOUTH AMERICA AGREEMENT (the "Agreement")

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to enable the Parties to provide efficient, dependable, durable, stable and competitive transportation service in the trade covered hereby for their mutual benefit and that of the shipping public, by means of the cooperative arrangements hereinafter established.

ARTICLE 3: PARTIES TO THE AGREEMENT

The names and addresses of the principal offices of the parties to the Agreement (the "Parties") are the following:

- (1) SCM LINES TRANSPORTES MARITIMOS SOCIEDADE UNIPESOAL, LDA  
Rua Dr. Brito Camara, 20-1o  
9000-039 Funchal'  
Madeira, Portugal
- (2) COMPANIA CHILENA DE NAVEGACION INTEROCEANICA, S.A.  
"CCNI"  
Plaza de la Justicia 59  
Valparaiso, Chile

#### ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement will provide service for the transportation of break bulk and project cargo, whether moving in all-water or intermodal service, under port to port or through bills of lading, direct or by transshipment, in the trade between ports and inland points served via such ports on the US Gulf of Mexico on the one hand and ports and inland points served via such ports on the east coast of South America (Brazil and Argentina) on the other hand. The foregoing scope is hereinafter referred to as the "Trade".

#### ARTICLE 5: OVERVIEW OF AGREEMENT AUTHORITY

A. The Parties may charter, cross-charter or otherwise make space available to and/or from each other on their respective vessels for the transport of break bulk and project cargo in a liner service in the Trade, all upon such terms and conditions (including those regarding the handling of claims) as they may from time to time agree under appropriate documentary arrangements. The Parties also may, subject to their mutual consent, individually or jointly obtain space from such other carriers pursuant to such agreements. Except as the Parties may otherwise agree, cargo carried by them within the Trade may only be carried on Vessels operated by them under this Agreement, and not on any other vessels or via the services of any other carriers.

B. The Parties may agree on their respective services in the Trade including the number, size and type of vessels they employ, the rationalization of such services, the number of sailings, schedules, ports called, frequency of port calls and apportionment of total vessel capacity. The Parties also may charter and sub-charter vessels to and/or from each other and jointly from others for use in the Trade on such terms as they may, from time to time, agree. The Parties shall, however, contribute no more than a total of 2 vessels of no more than 12,000 DWT capacity apiece. Initially each Party shall contribute 1 vessel, each of the following minimum description: 12,000 DWT multipurpose, tween deck, box shape, 690 teus capacity, 80 plugs.

C. The Parties may share or procure equipment, facilities, assign employees, agents and contractors to perform supervisory, administrative, accounting and/or operational functions (including documentation, data processing/interchange, husbanding, procurement of supplies and services, scheduling, allocation of space, forecasting, terminal operations, equipment control and stowage planning) relating to this Agreement, allocate any such functions between them and agree on the distribution of expenses arising therefrom. The Parties also may implement this Agreement by meetings, writings and other communications between them, through Committees appointed by their respective seniors and by means of other administrative/managerial arrangements deemed necessary to effectuate its

provisions, and they may prepare and exchange statistics, studies, reports, information and other data and materials as pertain to Agreement business and agree on matters regarding indemnification and insurance.

D. The Parties may cooperate and agree on the operation, procurement and use of terminal facilities, jointly negotiate and enter into leases, subleases or assignments for such facilities, and contract for stevedoring, terminal and other required services or supplies with each other and jointly with third parties, provided, however, that nothing in this Agreement shall serve to authorize the Parties to jointly establish, operate, or maintain a marine terminal in the United States.

E. The Parties may discuss and agree on, and each Party will bear, the full costs of the vessel(s) it contributes and operates pursuant to this Agreement including without limitation the full hire thereof (if voyage or time-chartered), bunkers, stevedore, terminal and P&I costs and each Party shall manage/operate such vessel(s) so as to meet mutually established sailing schedules.

F. The Parties may pool revenue, expenses, earnings and/or losses accruing from operations under this Agreement in accordance with the following terms.

(a) All gross freights from cargo within the Trade and scope of this Agreement (collectively "Revenue") will be aggregated and pooled. All costs whatsoever arising from operating vessels or booking, carrying, loading or

discharging cargo carried within the Trade and scope of this Agreement (collectively “Expenses”) will likewise be aggregated and pooled. The Parties shall reimburse a Party which has paid any Expenses incurred in the Trade, pursuant to procedures they establish from time to time. The difference between such Revenue and Expenses constituting net income or loss will be equally apportioned between the Parties pursuant to procedures they establish from time to time.

(b) The Parties may discuss and agree to the books, records, debit/credit notes and other accounting documents to be established and maintained by and between them, currency in which accounts will be stated and rates of exchange to be applied to currency conversion, all accounting procedures to be established and maintained and all matters pertaining to the accounting, reconciliation and settlement of accounts under this Agreement.

G. Notwithstanding any other provision of this Agreement and for all purposes in connection herewith each Party shall retain its separate corporate identity, be responsible to collect its own freight revenue and bear its own bad debts.

H. The Parties are authorized to discuss and agree upon administrative matters related to issues with regard to the service including, but not limited to, the operation and marketing of the service, procedures for allocating space,

forecasting, record-keeping, and the interchange of information and data regarding all matters within the scope of this Agreement.

I. Each Party to this agreement shall conduct its own marketing and sales functions for the service operated hereunder. Each party may advertise the other Party's sailings as its own.

J. (i) The Parties agree that they may, but are not required to, have a common position concerning membership in any conference or rate agreement covering any sector of the Trade.

(ii) The Parties may, on a voluntary basis and subject to the provisions of any conference, rate, discussion or other agreement(s) to which they adhere in the Trade, discuss and agree upon a common position with respect to any matter within the scope thereof. Provided, however, that nothing in this Agreement shall serve to abridge, impede or otherwise restrict exercise of the right of independent action to which each of the Parties may be entitled under any such other agreement.

(iii) To the extent the Parties are not members of any conference or rate agreement covering any sector of the Trade, or that rates and/or service items are open or otherwise not established or set under such an agreement to which they adhere, the Parties may discuss and, on a voluntary and non-binding basis, agree



upon rates, charges, service items and conditions of service and policy in connection with their respective operations.

K. Each Party shall issue its own bills of lading, handle its own claims, maintain and modify its own rates, rules, pricing, charges, surcharges, credit terms, and forwarder and broker compensation, and all terms, conditions and practices (hereafter “rates and terms”) covering any and all cargo moving in the Trade and shall publish its own tariffs containing such rates and terms.

L. Pursuant to 46 CFR 535.407, any further agreements between the Parties shall not go into effect, unless filed and effective under the Shipping Act, to the extent such filing is legally required.

M. The Parties agree that this Agreement by itself does not create a corporation, partnership, unincorporated association, joint stock company, business trust or joint venture involving the Parties. Each Party agrees that it shall have no authority to assume or create any obligation on behalf of the other Party. This Agreement shall not be governed by the laws construing corporation, partnership, association, joint stock company, business trust or joint venture of any country or state.

N. As used herein, and as germane to handling of any claim of any third party, the Party utilizing space on the other’s vessel shall be referred to as “Charterers”. The Party providing space shall be referred to as “Owners.”

O. Neither Party shall assign or sub-charter space made available to it hereunder to any third party.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATIONS  
OF AUTHORITY

The officials of this Agreement shall be senior executive representatives of the Parties as designated, from time to time, by them. Said officials shall have authority to file this Agreement, modifications thereto, to submit associated supporting materials and to delegate such authority to legal counsel.

ARTICLE 7: MEMBERSHIP

Membership in this Agreement is limited to the Parties.

ARTICLE 8: VOTING

All actions taken pursuant to, or any amendment of, this Agreement shall be by mutual agreement of the Parties.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

A. Effective Date

This Agreement shall be implemented by the Parties as of the date it becomes effective under the U.S. Shipping Act of 1984, as amended. It shall be effective for a period of one (1) year and shall automatically renew thereafter unless it is terminated per Article 9, B.

B. Termination

Any Party may withdraw from this Agreement at any time after this Agreement has been effective for 6 months upon no less than 60 days' written notice to the other Party, or on such lesser period of time as the Parties may mutually agree in writing. Any withdrawal shall be without prejudice to the Parties' respective accrued obligations to one another as of the date of withdrawal. Any voyage of a vessel of a Party operated pursuant to this Agreement which has commenced but has not been completed prior to the effective date of the termination of this Agreement shall be subject to the terms of this Agreement in its entirety. Any obligation incurred by either Party under this Agreement during the term thereof shall survive its termination.

C. In the event of the following Events of Default occurring, the Party for which the Events of Default do not occur (in this clause referred to as the "Non-

Defaulting Party”) may immediately terminate this Agreement in relation to the Party in Default (“Defaulting Party”):

(a) Failing to perform or observe any covenant, undertaking, condition or provision contained in this Agreement (including but not limited to failure to make any payment due under this Agreement) and such failure continues for a period of ten (10) days following the service via facsimile or e-mail by the Non-Defaulting Party to the Defaulting Party of notice requiring such failure to be remedied; or

(b) becoming bankrupt or insolvent, or appointing a receiver or liquidator or trustee or assignee in bankruptcy or insolvency, or commencement of business under a receiver for benefit of any of its creditors, or making a general assignment for the benefit of any of its creditors, or petition being presented or convening a meeting for the purpose of considering a resolution, or other step being taken for the winding up or liquidation of the Defaulting Party (otherwise than for the purpose of a merger, amalgamation or reconstruction to the terms whereof approval in writing by the Non-Defaulting Party shall have been previously given, which shall not be unreasonably withheld), or occurring of any event similar to any of the above under the laws of the Defaulting Party’s country of incorporation.

Any Party which, notwithstanding a Default by the other Party, continues to participate in the Agreement, shall not be deemed to have waived its right of

immediate withdrawal under this Article, unless and until the Defaulting Party shall have cured any default in accordance with those Articles.

#### ARTICLE 10: APPLICABLE LAW

The interpretation, construction and enforcement of this Agreement, and all rights and obligations between the Parties, shall be governed by the general maritime law of the United States as applied by the federal courts sitting in the Southern District of New York and to the extent not inconsistent therewith, the law of the State of New York, provided, however, that nothing herein shall relieve the Parties of obligations to comply with the U.S. Shipping Act of 1984, as amended.

#### ARTICLE 11: ARBITRATION

Any and all differences and disputes of whatsoever nature arising out of this Agreement which cannot be resolved amicably shall be put to arbitration in the City of New York pursuant to the Rules of the Society of Maritime Arbitrators, Inc., New York ("SMA") before a panel of three arbitrators, unless the Parties to the arbitration otherwise agree. The decision of any two of the three arbitrators on any point or points shall be final and binding.

(i) Unless the Parties to the arbitration otherwise agree, each Party shall appoint one arbitrator and the two arbitrators so chosen shall appoint a third

arbitrator. If the two arbitrators fail to agree on the appointment of a third arbitrator, either Party may apply to a court of competent jurisdiction to appoint the third arbitrator.

(ii) Until such time as the arbitrators finally close the hearings any Party shall have the right by written notice served on the arbitrators and on the other Party(ies) to specify further disputes or differences under this Agreement for hearing and determination.

(iii) The arbitrators may grant any relief which they, or a majority of them, deem just and equitable and within the scope of the Agreement, including but not limited to, specific performance. Awards pursuant to this Agreement may include costs, including a reasonable allowance for attorneys' fees, but shall not include exemplary or punitive damages. Judgment may be entered upon any award made hereunder in any court having jurisdiction in the premises.

(iv) Notwithstanding anything to the contrary in the Agreement or in law, any Party shall have the right to apply to any Court of competent jurisdiction to obtain any prejudgment remedy to which it may be entitled against another.

## ARTICLE 12: NON-ASSIGNMENT

The Parties agree that neither Party hereto shall have the right to assign any of its rights or obligations hereunder to any third-party without the express written

consent of the other Party hereto. Any assignment shall also be subject to any regulatory requirements that may be applicable.

#### ARTICLE 13: MISCELLANEOUS

A. Severability – If any provision of this Agreement as presently stated or later amended is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then this Agreement shall be invalid only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

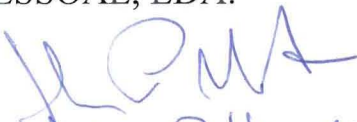
B. Waiver – No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement, or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver or any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any right, power or privilege. No waiver shall be valid against any Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

C. Amendment – Any modification or amendment of this Agreement must be in writing and signed by all Parties.


D. Signature – This Agreement may be executed in multiple parts and delivered by exchange of facsimile or email copies showing the signatures of each Party, and the original signatures need not be affixed to the same copy. The facsimile or email copies showing the signature of each Party will constitute original signed copies of the same Agreement requiring no further execution,

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

SCM LINES TRANSPORTES MARITIMOS SOCIEDADE  
UNIPessoal, LDA.

By:   
Name: John P. Uareda  
Title: Attorney

COMPANIA CHILENA DE NAVEGACION INTEROCEANICA S.A.

By:   
Name: John P. Uareda  
Title: Attorney